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SUBJECT: PRO-WOMEN JIRGA JUSTICE? YES AND NO SAY AFGHAN
HUMAN RIGHTS ACTORS

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1. (SBU) SUMMARY. Afghan human rights actors are engaged in a spirited debate over whether the international community and its Afghan partners should support informal justice mechanisms such as jirgas and shuras (bodies of community leaders that resolve community members' disputes). The issue is whether informal justice mechanisms can adjudicate disputes in a manner that respects human rights, particularly for women. Afghan civil society is split on the question.

AWN: Successful Pilot Project

2. (SBU) Supported by an OXFAM grant, the Afghan Women's Network (AWN) founded three legal aid offices in Jowzjan, Nangarhar, and Kunduz focused on resolving civil law cases through the informal justice system. The Afghan lawyer and social worker staffing each office primarily handle family law cases such as forced marriage, divorce, child custody or cases in which daughters are given away to settle debts or as compensation for a crime. While most clients are women, men also approach the clinics, most commonly seeking assistance when a wife or daughter runs away from home.

3. (SBU) In working the cases, the AWN social worker meets with both parties to the dispute, listens to their versions of the situation, and attempts to mediate a mutually acceptable agreement. The social worker, lawyer, and the two families then meet with community elders, the jirga, who announces the agreed upon solution as the dispute's resolution. Some of the most common resolutions are agreeing to transfer property or pay money instead of giving a daughter. Together the three clinics have resolved 300 cases from 9/08 through 2/09 in favor of the woman complainant, Barekzai said.

AWN: Favors Efforts to Modernize Jirgas

4. (SBU) AWN project manager Saifora Barekzai strongly supports increased efforts to improve the informal justice sector's treatment of women. Informal justice is the only form of justice available to most Afghans, and the international community and Afghan civil society should work to make its mechanisms and decisions fair to women and in line with human rights principles.

5. (SBU) Barekzai and AWN favor working to modernize jirga justice for several reasons: First, most Afghans are not aware of and definitely do not have access to the formal justice system. In most rural areas, there are not even any roads, let alone functioning courts, Barekzai emphasized. In these areas, the government is weak or non-existent, and the jirgas' decisions represent the only meaningful rule of law. Second, using the informal justice system reduces the chances families will punish women for seeking help outside of the community. If a woman runs away from her village to Kabul to get help, her family will not accept her back: she will be killed or seriously injured if she tries to return to her village, Barekzai claimed. On the other hand, rural Afghans accept the judgment of jirgas and do not typically punish women for seeking justice through community mechanisms.

But Acknowledges Limitations and Challenges

6. (SBU) Barekzai tempered her pro-jirga argument by acknowledging several limitations and challenges of pursuing justice through informal mechanisms. Jirgas should not handle serious crimes such as murder or rape, which should be tried in the formal justice system. Also, in some areas heavily influenced by fundamentalist warlords, even with NGO assistance, local elders would not be inclined to resolve a dispute in a woman's favor. In other areas, if AWN or a similar organization does not assist the woman complainant in presenting her case, the jirga will typically not decide the case in her favor, Barekzai acknowledged. However, without similar assistance, formal justice institutions also do not side with women, she claimed.

7. (SBU) On the other hand, Barekzai is not troubled by the absence of a legally binding document resulting from jirga decisions. In local communities, the elders' word is law,

more powerful than any document. The community accepts whatever the jirga decides, she reiterated. However, the AWN legal aid offices do keep documentary evidence and written notes for each case. She wishes to explore in the future building links between informal and formal justice through such mechanisms as formalizing a jirga decision through a

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court-issued document.

Voice of Women: Formal Justice is Best in the Long Term

18. (SBU) Voice of Women's (VOW) Suraya Pakzad agreed the only option for most Afghans to resolve a dispute is through the informal justice sector. However, she cautioned against the international community thinking of the informal justice sector as a permanent solution or investing huge amounts of resources to "modernize" jirga justice. Instead she advocates programs geared toward increasing citizens' understanding of their rights, for example, through radio and television announcements. These types of programs could positively affect jirga and formal justice actors alike, and also make people more likely to seek justice through either the formal or informal system.

AIHRC: 100 Percent Anti-Jirga

19. (SBU) Afghan Independent Human Rights Commission (AIHRC) Chair Sima Samar sharply disagreed with any international support to informal justice mechanisms. First, jirgas are not legitimate legal authorities: they are not contemplated in Afghan law, and have no formal rules, regulations, or appeals process. Jirgas do not base their decision on civil or religious law. Although they may claim to make decisions based on religious law, most informal adjudicators never formally studied religious law, she clarified. Second, warlords and druglords are often the community powerbrokers; asking them to take the place of courts is lowering expectations beyond toleration. Third, the informal sector never sides with women. Jirgas are always exclusively male, meaning women cannot access them without the support of a male relative. Even with this support, the outcome never favors a woman over a man, Samar claimed.

110. (SBU) Samar cited two recent cases to support her argument about injustice for women under the informal justice system: (1) In Ghazni Province two brothers raped an eight-year old girl. To resolve the dispute, the families and local elders agreed the brothers' family would give one of their daughters to the victim's family; (2) Baghdis Province villagers, following a jirga's decision, stoned to death two girls, ages 13 and 14, for running away from home.

111. (SBU) Samar challenged AWN's positive depiction of how NGOs can reform jirga justice. First, AWN's offices are in provincial capitals where the population typically has more progressive attitudes towards women. AWN does not have access to rural areas, Samar claimed. Nor is it possible for the AWN mode of NGO support to jirgas to expand in a meaningful way. There is a jirga in every village, a hundred in every district, and thousands in every province, she said. Redirecting the enormous financial resources necessary to support these jirgas would gut international support to the legitimate Afghan legal system. The international community should spend its energy and resources supporting the formal justice sector, Samar concluded. However, Samar said she enthusiastically supported public awareness campaigns such as radio programs emphasizing civil rights as a very effective way to increase public awareness of the existence of the formal justice system and improve the quality of informal decision-making.

Comment

112. (SBU) AWN is not alone in claiming informal justice bodies can treat women fairly. Norwegian Refugee Council in Herat reported similar positive outcomes (reftel). UNIFEM, in a break with their past anti-informal justice position, recently hired an international staff member dedicated to working with the Afghan government to develop a policy on the informal justice system, a process post closely monitors. Without NGO support, however, the vast majority of jirgas undoubtedly do not uphold basic human rights principles. Further, Samar's point that NGOs cannot physically reach most jirgas without a massive increase of international aid is solid. In allocating resources to support the informal or formal justice systems, we will hold the recipients accountable to supporting Afghan law and the human rights principles it espouses. Post will also explore more public outreach campaigns promoting civil rights awareness as a cost effective way to reach rural populations.

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